

Update: Juvenile Traffic Benchbook (Revised Edition)

CHAPTER 2

Taking Custody of a Juvenile and Investigating a Criminal Traffic Offense

2.4 Investigating a Juvenile's Alleged "Drunk Driving" Offense

B. Chemical Testing of Blood, Breath, or Urine

Insert the following text after the third paragraph on page 23:

Neither dismissal nor suppression of the evidence is the appropriate remedy when a police officer violates MCL 257.625a(6)(d) by depriving a defendant of his or her right to a reasonable opportunity for an independent chemical test under MCL 257.625a(6)(d). *People v Anstey*, ___ Mich ___, ___ (2006). Rather, "when the trial court determines that the defendant was deprived of his or her right to a reasonable opportunity for an independent chemical test under MCL 257.625a(6)(d), the court may instruct the jury that the defendant's statutory right was violated and that the jury may decide what significance to attach to this fact." *Anstey, supra* at ___. The Michigan Supreme Court so ruled because "suppression of the evidence is not an appropriate remedy for a statutory violation where there is no indication in the statute that the Legislature intended such a remedy and no constitutional rights were violated." *Id.* at ___. As a result of the Court's ruling in *Anstey*, *People v Koval*, 371 Mich 453, 459 (1963) and its progeny, which held that noncompliance with MCL 257.625a required dismissal, are overruled. *Anstey, supra* at ___.

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CHAPTER 5

Abstracts, Expungement of Records, & Setting Aside Adjudications

5.1 Requirements for Sending Abstract of Court Record to Secretary of State

A. Time Requirements for Violations of the Motor Vehicle Code and Other Criminal Traffic Offenses

Effective July 20, 2006, 2006 PA 298 amended MCL 257.732(1)(a) to change the number of days within which a court must forward an abstract of the court record to the Secretary of State. On page 64 replace the first paragraph in this section with the following text and delete the existing cross-reference:

MCL 257.732(1)(a) requires the court, not more than five days after a conviction, bail forfeiture, civil infraction determination, or default judgment, to forward an abstract of the court record to the Secretary of State if the juvenile is found within the jurisdiction of the Family Division for violating the Motor Vehicle Code or a local ordinance substantially corresponding to a provision of the Motor Vehicle Code.

Effective July 20, 2006, 2006 PA 298 amended MCL 257.732(5) to remove language indicating the subsection's effective date. Replace the quote of MCL 257.732(5) near the middle of page 65 with the following text.

“The clerk of the court shall also forward an abstract of the court record to the secretary of state if a person has pled guilty to, or offered a plea of admission in a juvenile proceeding for, a violation of . . . MCL 436.1703, or a local ordinance substantially corresponding to that section, and has had further proceedings deferred under that section. If the person is sentenced to a term of probation and terms and conditions of probation are fulfilled and

the court discharges the individual and dismisses the proceedings, the court shall also report the dismissal to the secretary of state.” MCL 257.732(5).

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CHAPTER 6

Elements of Selected Criminal Traffic Offenses

“Drunk Driving” Offenses

6.9 Section 625(1) and (8) Offenses—OWI

D.* Issues

Insert the following text after the partial paragraph at the top of page 103:

In *People v Derror (Derror II)*, ___ Mich ___, ___ (2006), the Supreme Court clarified that its decision in *People v Schaefer*, 473 Mich 418 (2005), also applies in cases involving violations of MCL 257.625(8).

Said the *Derror* Court:

“The plain language of MCL 257.625(8) does not require the prosecution to prove beyond a reasonable doubt that a defendant knew he or she might be intoxicated. MCL 257.625(8) does not require intoxication, impairment, or knowledge that one might be intoxicated; it simply requires that the person have ‘any amount’ of a schedule 1 controlled substance in his or her body when operating a motor vehicle. We thus clarify *Schaefer* and hold that, in prosecutions involving violations of subsection 8, the prosecution is not required to prove beyond a reasonable doubt that a defendant knew he or she might be intoxicated.” *Id.* at ___.

In addition to its clarification of *Schaefer*, *supra*, the *Derror II* Court reversed the Court of Appeals decision in *People v Derror (On Reconsideration) (Derror I)*, 268 Mich App 67 (2005), and held that 11-carboxy-THC is a schedule 1 controlled substance. Therefore, delete the October 2005 update to page 103 and insert the following case summary:

*Relettered as “D” by the October 2005 update.

The defendant in this case was the driver in a head-on collision that killed one person, paralyzed two more, and less-seriously injured another. *Derror II, supra* at _____. The defendant admitted smoking marijuana four hours before the accident, and blood tests taken shortly after the accident showed that the defendant had 11-carboxy-THC, a metabolite of THC, the psychoactive ingredient of marijuana, in her system at the time of the accident. *Id.* at _____. At trial, the court held that 11-carboxy-THC is not a schedule 1 substance, but that presence of the substance in the defendant's blood was admissible as circumstantial evidence to establish that the defendant had at some time ingested THC, which is a schedule 1 controlled substance *Id.* at _____. The defendant was convicted of operating a motor vehicle with the presence of a schedule 1 controlled substance in her body, causing death and serious injury (MCL 257.625(5)). *Id.* at _____. The Court of Appeals affirmed the trial court's ruling that 11-carboxy-THC was not a schedule 1 controlled substance. *Derror II, supra* at _____. The Supreme Court, however, reversed this ruling. According to the Court:

“Because 11-carboxy-THC qualifies as a derivative, and since derivatives are included within the definition of marijuana, which MCL 333.7212(1)(c) specifically lists as a schedule 1 controlled substance, we hold that 11-carboxy-THC is a schedule 1 controlled substance under MCL 333.7212(1)(c) for the purpose of MCL 257.625(8).” *Derror II, supra* at _____.

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CHAPTER 6

Elements of Selected Criminal Traffic Offenses

“Drunk Driving” Offenses

6.9 Section 625(1) and (8) Offenses—OWI

C. Licensing and Vehicle Sanctions

3. Offenders Who Violate §625(1) or (8) Within Ten Years of Two or More Prior Convictions

Effective December 27, 2005, 2005 PA 317 amended MCL 257.219(1)(d). Replace the existing paragraph beginning at the bottom of page 100 and continuing on page 101 with the following text:

The Secretary of State must refuse issuance of a registration or a transfer of registration if the driver’s license of the vehicle’s owner or lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m, a local ordinance substantially corresponding to §625 or §625m, or a law of another state substantially corresponding to §625 or §625m. MCL 257.219(1)(d). This provision also applies to co-owners and co-lessees of the vehicle.

CHAPTER 6

Elements of Selected Criminal Traffic Offenses

“Drunk Driving” Offenses

6.10 Operating While Visibly Impaired (OWVI)—§625(3)

C. Licensing and Vehicle Sanctions

3. Repeat Offenders—Violation Within Ten Years of Two or More Prior Convictions

Effective December 27, 2005, 2005 PA 317 amended MCL 257.219(1)(d). Replace the second paragraph following the bulleted list on page 108 with the following text:

The Secretary of State must refuse issuance of a registration or a transfer of registration if the driver’s license of the vehicle’s owner or lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m, a local ordinance substantially corresponding to §625 or §625m, or a law of another state substantially corresponding to §625 or §625m. MCL 257.219(1)(d). This provision also applies to co-owners and co-lessees of the vehicle.

CHAPTER 6

Elements of Selected Criminal Traffic Offenses

“Drunk Driving” Offenses

6.11 “Zero Tolerance” Violations—§625(6)

C. Licensing Sanctions

4. Offenders Who Violate §625(6) Within Ten Years of Two or More Prior Convictions*

Effective December 27, 2005, 2005 PA 317 amended MCL 257.219(1)(d). Replace the paragraph following the bulleted list on page 114 with the following text:

The Secretary of State must refuse issuance of a registration or a transfer of registration if the driver’s license of the vehicle’s owner or lessee is suspended, revoked, or denied for a third or subsequent violation of §625 or §625m, a local ordinance substantially corresponding to §625 or §625m, or a law of another state substantially corresponding to §625 or §625m. MCL 257.219(1)(d). This provision also applies to co-owners and co-lessees of the vehicle.

*Incorrectly
numbered “3”
on page 113.

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CHAPTER 3

Permitted Procedures for Adjudicating Criminal Traffic Offenses

3.6 Requirements Under the Crime Victim's Rights Act

Effective January 1, 2006, 2005 PA 184 added one offense to the list of offenses in MCL 780.781(1)(f)(iii) to which the requirements of MCL 780.783a apply. Insert the following text before the first bullet on page 36:

- injuring a worker in a work zone, MCL 257.601b(2);

CHAPTER 4

Dispositions for Criminal Traffic Violations

4.5 Restitution, Crime Victim's Rights Assessment, and Reimbursement of Costs of Service

A. Restitution

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(2) to add youthful trainee status and delayed sentences or deferred judgments of guilt to the list of outcomes requiring the court to order full restitution under MCL 780.794. Replace the quoted text at the top of page 50 with the following:

“Except as provided in subsection (8), at the dispositional hearing or sentencing for an offense, the court shall order, in addition to or in lieu of any other disposition or penalty authorized by law, that the juvenile make full restitution to any victim of the juvenile’s course of conduct that gives rise to the disposition or conviction or to the victim’s estate. For an offense that is resolved informally by means of a consent calendar diversion or by another informal method that does not result in a dispositional hearing, by assignment to youthful trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that is not an acquittal or unconditional dismissal, the court shall order the restitution required under this section.”

CHAPTER 4

Dispositions for Criminal Traffic Violations

4.5 Restitution, Crime Victim's Rights Assessment, and Reimbursement of Costs of Service

A. Restitution

"Victim" defined.

Insert the following text immediately before **"Calculating loss for property damage"** on page 52:

Parents of a minor victim. MCL 780.794(24)* states that "[i]f the victim is a minor, the order of restitution shall require the defendant to pay to a parent of the victim an amount that is determined to be reasonable for any of the following that are actually incurred or reasonably expected to be incurred by the parent as a result of the crime:

"(a) Homemaking and child care expenses.

"(b) Income loss not ordered to be paid under [MCL 780.794(4)(h)].*

"(c) Mileage.

"(d) Lodging or housing.

"(e) Meals.

"(f) Any other cost incurred in exercising the rights of the victim or a parent under this act."

Calculating loss for property damage.

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(3) to mandate a court to order one or more of the remedies in the statute when a juvenile's offense results in damage, destruction, or seizure of a victim's property. Near the middle of page 52, in the first full paragraph, replace the word "may" with "shall" in the first and third sentences.

Calculating expenses related to physical or psychological injury.

Effective January 1, 2006, 2005 PA 184 also eliminated the suggestion that a court has discretion to order restitution for the expenses related to physical or psychological injury and amended the list of items for which a juvenile may be ordered to pay restitution when the juvenile's crime results in physical or psychological injury to a victim. At the bottom of page 52 and the top of page

*Effective
January 1,
2006. 2005 PA
184.

*See this
month's update
to this section
for discussion
of this statutory
provision.

53, replace the word “may” with “shall” in the first two sentences of that paragraph.

On page 53, add the following provision to the quoted list found in MCL 780.794(4):

* * *

“(h) Pay an amount equal to income actually lost by the spouse, parent, sibling, child, or grandparent of the victim because the family member left his or her employment, temporarily or permanently, to care for the victim because of the injury.”

CHAPTER 4

Dispositions for Criminal Traffic Violations

4.5 Restitution, Crime Victim's Rights Assessment, and Reimbursement of Costs of Service

B. Crime Victim's Rights Fund Assessment

Effective January 1, 2006, 2005 PA 184 added one traffic offense to the list of "serious misdemeanors" listed in MCL 780.811(1)(a). Insert the following text before the first bullet on page 57:

- injuring a worker in a work zone, MCL 257.601b(2);

CHAPTER 4

Dispositions for Criminal Traffic Violations

4.6 Allocation of Money Collected for Payment of Fines, Costs, Restitution, Assessments, or Other Payments

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794a(1) to address allocation of payments in cases where a juvenile must pay fines, costs, restitution, and other payments in more than one proceeding and fails to specify the proceeding to which a payment applies. Insert the following text before Section 4.7, near the bottom of page 60:

MCL 780.794a(1) governs the allocation of money collected from a juvenile who is obligated to make payments in more than one proceeding and who, when making a payment, fails to specify the proceeding to which the payment applies. According to MCL 780.794a(1):

“If a person is subject to fines, costs, restitution, assessments, probation or parole supervision fees, or other payments in more than 1 proceeding in a court and if a person making a payment on the fines, costs, restitution, assessments, probation or parole supervision fees, or other payments does not indicate the proceeding for which the payment is made, the court shall first apply the money paid to a proceeding in which there is unpaid restitution to be allocated as provided in this section.”

CHAPTER 5

Abstracts, Expungement of Records, & Setting Aside Adjudications

5.2 Family Division Records of Criminal Traffic Violations

Effective January 1, 2006, the exception in MCR 3.925(E)(2)(c) to the destruction of juvenile files for adjudicated offenses described in MCL 712A.18e(2) was eliminated. On page 66, replace the third paragraph with the following text:

MCR 3.925(E)(2)(c) states that, except for diversion and consent calendar records (discussed below), “the court must destroy the files and records pertaining to a person’s juvenile offenses when the person becomes 30 years old.”